

REMARKS

The Office Action has been reviewed and the Examiner's comments carefully considered. Claim 9 is amended. Claim 23 is added. No claims are cancelled. Thus, claims 9-20 and 22-23 are pending and are submitted for reconsideration.

Claim Objections

Claims 9 and 20 are objected to because the term "tube" should be "pipe." Claims 9 and 20 have been amended to correct this minor informality. Favorable reconsideration is respectfully requested.

Claim Rejections based on O'Loughlin

Claims 9-14 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,794,973 ("O'Loughlin"). Claim 15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Loughlin. These rejections are traversed because O'Loughlin does not teach, disclose, or suggest the claimed invention.

For example, claim 9 recites "wherein the elongated pipe contains a plurality of spaced apart openings at three or more different distances from one of the ends of the pipe along the circumferential surface of the pipe." O'Loughlin does not teach or suggest this feature. The Office Action points to Fig. 11 and asserts that the elongated pipe 702 comprises a plurality of spaced apart openings at a plurality of different distances from one of the ends of the pipe. Fig. 11 of O'Loughlin shows a plurality of openings 762 and 772 in which their centerlines are at the same distance from the ends of the pipe but the openings 772 are larger than the openings 762 so that the edges of the openings 772 and the edges of the opening 762 are at different distances from the end of the pipe due to this size difference. Claim 9 requires a plurality of spaced apart openings at three or more different distances. Even if the edges of the openings 762 and 772 are interpreted to be at different distances, they are only at two different distances and not three or more. Thus, O'Loughlin does not teach or suggest all the features of claim 9.

Claims 10-19 depend from and contain all the limitations of claim 9, and are allowable therewith for at least the reasons provided above without regard to the further patentable features contained therein.

For at least these reasons, reconsideration and withdrawal of the rejections are respectfully requested.

Claim Rejections based on Smith and O'Loughlin

Claims 20 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,846,013 (“Smith”) in view of O’Loughlin. This rejection is traversed because Smith, O’Loughlin, or any combination thereof does not teach, disclose, or suggest the claimed invention.

The Office Action asserts that Smith teaches an airbag, a pipe 12 with a plurality of spaced openings 16, and a single inflation device. (Paragraph 7 of the Office Action.) Also, it is asserted in the Office Action that it would have been obvious to perform the following modifications: (1) to fill the pipe with pressurized gas in order to allow proper mixing of the gases, (2) to seal the openings so as to control when the gas leaves the openings, and (3) to have a pair of inflation devices so as to have the inflation gas exit each side of the pipe uniformly. (Paragraph 7 of the Office Action.)

As to modification (1), the motivation for this modification is improper because the contention that filling the pipe of Smith with pressurized gas allows for the proper mixing of gases is not taught in the prior art. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.” MPEP 2143 (quoting *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Indeed, there is no evidence in this case to suggest that Smith suffers from the improper mixing of gases. One with ordinary skill in the art would not have been motivated to modify the device of Smith so as to correct for something that is not even recognized in the prior art as being a problem. In addition, there is no evidence to suggest that the pressurizing gas of O’Loughlin corrects for the improper mixing of gas.

As to modification (2), the sealing of openings would only be relevant if the pipe of Smith is full of pressurized gas. In other words, if there was no motivation to use the pressurized gas of O’Loughlin in the device of Smith (and it is respectfully submitted that there is no such motivation), there is no motivation for sealing the openings of Smith so as to contain the pressurized gas. Thus, because the motivation for the modification of adding the

pressurized gas to the device of Smith is improper as presented above, it follows that the motivation to use the seals on the openings is also improper.

As to modification (3), the alleged use of two inflators to permit the inflation gas to exit uniformly is not a proper motivation because it is not taught in the prior art. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.” MPEP 2143 (quoting *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). In this case, there is no evidence to support the alleged motivation that two inflators would permit the inflation gas to exit uniformly. Furthermore, motivation (3) is improper because the gas exiting the device of Smith does not suffer from the alleged problem of non-uniform gas flow. In particular, Smith explicitly teaches that the openings are designed to provide an even distribution. (Column 6, lines 11-13 of Smith.) Thus, one with ordinary skill in the art would not be motivated to modify the device of Smith to correct for non-uniform gas flow when Smith clearly teaches that it is not even a problem.

Because there is no proper motivation to use the pressurized gas, the seals, and the second inflation device of O'Loughlin in the device of Smith, any combination of Smith and O'Loughlin is improper. Therefore, claims 20 is not rendered unpatentable over the teachings of the prior art.

Claims 22 depends from and contains all the limitations of claim 20, and are allowable for at least the same reasons as claim 20 without regard to the further patentable features contained therein.

For at least these reasons, favorable reconsideration and withdrawal of the rejection are respectfully requested.

Allowability of New Claim 23

Claim 23 is added and is allowable because claim 23 recites “wherein the elongated pipe contains a plurality of spaced apart openings at a plurality of different distances from one of the ends of the pipe along the circumferential surface of the pipe...wherein the openings are partial punctures in the elongated pipe which form weakened portions.” The prior art, particularly O'Loughlin and Smith, does not teach or suggest the partial punctures.

Conclusion

It is believed that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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